

AMENDED IN ASSEMBLY APRIL 19, 2006

AMENDED IN ASSEMBLY APRIL 6, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 2388**

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**Introduced by Assembly Member Vargas**

February 23, 2006

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An act to add Section 41514.15 to the Health and Safety Code, relating to air pollution.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2388, as amended, Vargas. Air pollution: imported electricity: mitigation fee.

(1) Existing law designates air pollution control districts and air quality management districts as having the primary responsibility for the control of air pollution from all sources other than vehicular sources. Existing law also designates the State Air Resources Board as the state entity responsible for the coordination and review of all levels of government in their efforts to control air pollution.

This bill would require any person that imports electricity into the state, or causes electricity to be imported into the state, to pay up to a \$0.001 per kilowatthour air contaminant emission electricity generation mitigation fee for that electricity, but not to exceed the cost of mitigation, as determined by the state board. The bill would authorize the state board to reduce that fee to a lower amount, upon making a determination that the lower fee amount would further enhance reductions of emissions of air contaminants. The bill would impose the fee only if the electricity is produced by an electrical generating facility, as defined, that is located within an air basin

shared by a district and Mexico and located in Mexico within 100 kilometers of the United States' border and if ~~the state board determines that~~ the electrical generating facility was not constructed *to meet all existing California air pollution regulations and standards, including, but not limited to, best available control technology (BACT) and any offsets that would be required under California law to mitigate any additional pollution using the best available control technology (BACT) for air contaminants.*

The bill would establish the Imported Electricity Air Pollution Mitigation Subaccount in the Air Pollution Control Fund, and would require the fees to be deposited in that subaccount. The bill would make the moneys deposited in the subaccount available to the state board, upon appropriation by the Legislature, for distribution to each district in the state that the state board determines is directly impacted by emissions of air contaminants from those electrical generating facilities. The bill would require each district receiving those revenues to fund projects within its jurisdiction to mitigate the environmental or health impacts of electricity generation facilities. By prescribing additional duties on districts, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 41514.15 is added to the Health and
- 2 Safety Code, to read:
- 3 41514.15. (a) Any person who imports electricity into the
- 4 state, or causes electricity to be imported into the state, shall pay
- 5 an electricity generation mitigation fee in the amount described
- 6 in subdivision (b) to the state board to mitigate the air pollution
- 7 caused by the generation of that electricity, if the electrical
- 8 generating facility that generated the electricity meets all of the
- 9 following criteria:

1 (1) Is located within an air basin shared by a district and  
2 Mexico, as determined by the state board.

3 (2) Is located in Mexico.

4 (3) Is located within 100 kilometers of the United States'  
5 border.

6 (4) Was not constructed ~~using the best available control~~  
7 ~~technology (BACT) for air contaminants, as determined by the~~  
8 ~~state board.~~ *to meet all existing California air pollution*  
9 *regulations and standards, including, but not limited to, best*  
10 *available control technology (BACT) and any offsets that would*  
11 *be required under California law to mitigate any additional*  
12 *pollution.*

13 (b) The electricity generation mitigation fee shall be assessed  
14 by the state board at a rate of not more than \$0.001 per  
15 kilowatthour of electricity that is imported into the state, but not  
16 to exceed the cost that the state board determines is necessary to  
17 mitigate the environmental or health impacts of electricity  
18 generation facilities meeting the criteria described in subdivision  
19 (a), and any associated administrative costs to each impacted  
20 district. The state board may impose a fee less than the \$0.001  
21 per kilowatthour of electricity if the state board determines that  
22 the lower fee amount would further enhance reductions of  
23 emissions of air contaminants.

24 (c) The fees collected by the state board pursuant to  
25 subdivision (a) shall be deposited into the Imported Electricity  
26 Air Pollution Mitigation Subaccount, which is hereby established  
27 in the Air Pollution Control Fund. The moneys deposited in the  
28 subaccount pursuant to this section shall be available to the state  
29 board, upon appropriation by the Legislature, for the purposes  
30 described in subdivision (d).

31 (d) (1) The state board shall distribute the revenues that are  
32 deposited in the subaccount pursuant to this section to each  
33 district that the state board determines is directly impacted by  
34 emissions of air contaminants from an electrical generating  
35 facility that meets the criteria described in subdivision (a), in the  
36 proportion that the state board determines that the district is  
37 impacted.

38 (2) A district receiving revenues pursuant to paragraph (1)  
39 shall utilize those moneys to fund projects within its jurisdiction  
40 that the district determines will mitigate the environmental or

1 health impacts of electrical generating facilities meeting the  
2 criteria of subdivision (a). The district may not expend more than  
3 10 percent of the moneys it receives from the state board  
4 pursuant to paragraph (1) for administrative costs.

5 (e) For the purposes of this section, “electrical generating  
6 facility” means every electrical generating unit of a powerplant  
7 that is located at a common site in Mexico. If more than one  
8 electrical generating unit exists at a powerplant project, all of the  
9 electrical generating units shall be deemed to be part of one  
10 electrical generating facility.

11 SEC. 2. No reimbursement is required by this act pursuant to  
12 Section 6 of Article XIII B of the California Constitution because  
13 a local agency or school district has the authority to levy service  
14 charges, fees, or assessments sufficient to pay for the program or  
15 level of service mandated by this act, within the meaning of  
16 Section 17556 of the Government Code.